

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

July 14, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Requesting final approval of amendments to Chapter 13-242, Hawaii Administrative Rules, as they relate to cruise ship fee increases and requesting authorization to submit the approved rules to the Governor for final adoption.

BACKGROUND: The fees rules packet that was first reviewed by the Land Board on June 22, 2001, included rules that would affect both recreational and commercial fee increases. The Board approved the rules, which were then forwarded to the Governor for permission to proceed to public hearings. Both recreational and commercial rule amendments proceeded to ten public hearings held on October 5, 2002.

Subsequent to the public hearings, amendments to Chapter 13-242 were extracted and forwarded separately.

On April 22, 2005 these Chapter 13-242 amendments went before the Land Board for a second time.

The board approved staff's recommendations to adopt the rules as submitted and grant approval to forward the rules to the Governor for final approval on the condition that, "Before the rules are forwarded to the Governor for final approval, the Division of Boating and Ocean Recreation shall provide the Board a report on their compliance with all Federal laws, specifically the federal Rivers and Harbors Appropriation Act of 1884 so the Board can be assured the Department is in compliance with regards to the projected revenues and how the revenues are used".

Thus the department requested the advise of the Attorney General to comply with the Board's request. The Attorney General advised the department that HAR 13-234-26(b) as written conflicted with federal law, which does not allow differences in fees between intra-state, inter-state or international commerce.

Thus HAR 13-234-26(b) has been amended so that passenger vessels engaged in intra-state, inter-state and international commerce all pay the same \$1.40 user fee each way. All other rule amendments which were approved by the Board at the April 22, 2005 Land Board meeting remain the same.

ITEM J-1


The Attorney General further advised the department that this change does not require additional public hearings and that the department, with Land Board approval, can forward the rule amendments to the Governor for final approval.

Additionally, all cruise ship fees are used only to service cruise ship activities.

RECOMMENDATION: That the Board:

1. Adopt the rules as submitted.
2. Grant approval to forward amendments to Chapter 13-242, Hawaii Administrative Rules to the Governor for final approval.

Respectfully Submitted,



Richard Rice
Administrator, Division of Boating and Ocean Recreation

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

Department of Land and Natural Resources

Amendments to Chapter 13-234, Hawaii Administrative Rules

Section 13-234-26, Hawaii Administrative Rules, is amended to read as follows:

§13-234-26 Passenger user fees. (a) Notwithstanding the provisions of section 13-234-25, [Any] passenger vessel or cruise vessel [which is used for private gain and does] companies engaged in commercial activities that do not [have a valid mooring permit or] possess a commercial activity permit and [which uses] whose vessels enter a state [small boat harbors property or facilities] boating facility for purposes of embarking or disembarking passengers shall be required to pay the following user fees in addition to any other fees required by this chapter:

<u>Categories</u>	<u>One way user fee per passenger</u>
(1) [Per passenger] <u>Passengers (includes in transit)[--] embarking to or from shore to ship[.....] within a state boating facility.</u>	\$2.00

[(2) Passengers in transit on a vessel on a continuous trip whose point of origin and termination is a state small boat harbor, a total of disembarking and embarking at each port per passenger..... \$1.50

(3) Passengers embarking and disembarking on occasional and infrequent use on special charter when approved in advance of voyage as provided in section 13-231-57(c)(3)\$1.50]

(b) Any passenger vessel or cruise vessel using a [dock, pier or wharf in a state small boat harbor] state boating facility for disembarking and embarking passengers by means of any boat or lighter while hove to or moored offshore, shall pay a user fee per passenger, which shall be inclusive of all other fees required by this chapter, for disembarking and embarking at each [small boat harbor] state boating facility as follows:

<u>Categories</u>	<u>User fee each way</u>
Passenger vessels engaging [only] in [inter-island] <u>intra-state, international, or inter-state commerce[:.....]</u>	[\$.30] <u>\$1.40</u>
[Passenger vessels engaging in international or inter-state commerce:.....]	[\$1]

(c) Vessels operated by a federal or state agency [are] shall be exempt from the provisions of this subsection.

[(c)] (d) [A report] The ship's agent shall [be filed] file a tally of the number of passengers based on the passenger manifest with the department on a form [acceptable to] provided by the department. The tally shall be submitted within thirty days after the date of embarking or disembarking of passengers over state boating facilities and the charges due shall be remitted along with the report.

[(d)] (e) Commercial vessel operators who have been issued a certificate of public

convenience in accordance with section 200-9, HRS, shall be exempt from the provisions this section. [Eff 2/24/94 am and comp] (Auth: HRS 200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS 200-2, 200-3, 200-4, 200-10, 200-22, 200-24)